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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC DUFFY,

Defendant and Appellant.

B207127

(Los Angeles County
Super. Ct. No. NA072679)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Tomson T. Ong, Judge. Reversed and remanded.

Janet J. Gray, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Linda C.
Johnson, Supervising Deputy Attorney General and Carl N. Henry, Deputy Attorney
General, for Plaintiff and Respondent.

A jury found defendant and appellant Eric Duffy guilty of two counts of second degree robbery, one count of second degree burglary, possession of narcotics, and resisting an executive officer in the performance of his duties. The trial court found true allegations that Duffy had two prior serious or violent felony convictions or juvenile adjudications under the “Three Strikes” law, and that he had served two prior prison terms. Duffy was sentenced to an aggregate term of 106 years to life in state prison.

On appeal, Duffy contends that the trial court (1) erred by refusing to instruct the jury on misdemeanor resisting arrest as a lesser included offense of felony resisting arrest, (2) violated his constitutional rights by refusing to strike a prior juvenile adjudication, (3) either misunderstood the scope of or failed to exercise its discretion to dismiss prior strikes or to impose concurrent terms.

PROCEDURAL BACKGROUND

An information filed in July 2007 charged Duffy with 12 crimes: (1) six counts of second degree robbery (Pen. Code, § 211¹); (2) four counts of second degree commercial burglary (§ 459); (3) possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)); and (4) resisting an executive officer in the performance of his duties (§ 69). As pertinent here, the information also alleged as to all counts that Duffy had two prior serious or violent felony convictions or juvenile adjudications under the “Three Strikes” law (§§ 1170.12, subds. (a)–(d), 667, subds. (b)–(i)), and two prior prison terms (§ 667.5, subdivision (b).) Duffy pleaded not guilty and denied the special allegations. Duffy filed a pretrial motion to dismiss the Three Strikes charges under section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero* motion), and a motion to dismiss his juvenile “strike” on constitutional grounds.

Following a bifurcated jury trial, the trial court dismissed four counts (not relevant here). Duffy was acquitted on three counts, and the jury found him guilty on five others: two counts of second degree robbery, and one count each of second degree burglary, possession of narcotics and resisting an officer. Duffy waived his right to a jury trial on

¹ All undesignated statutory references are to the Penal Code.

the priors. The trial court found Duffy had suffered two prior strikes pursuant to sections 1170.12, subdivisions (a)–(d), and 667.5, subdivisions (b)–(i), and two prior prison terms under section 667.5, subdivision (b). The court denied Duffy’s *Romero* motion and his motion to dismiss the juvenile strike. Duffy was sentenced to an aggregate term of 106 years to life: (1) consecutive third-strike terms of 25 years to life for each robbery conviction; (2) a consecutive third-strike term of 25 years to life for the narcotics conviction, (3) a consecutive third-strike term of 25 years to life for the charge of resisting an officer; (4) a five-year prior serious prior felony enhancement; and (5) a one-year prior prison term enhancement. Sentence was stayed as to the burglary conviction under section 654.

FACTUAL BACKGROUND

Duffy does not challenge the evidence that led to his convictions. His contentions on appeal relate only to purported instructional error and sentencing. Our factual recitation is abbreviated accordingly.

Late in the evening of September 26, 2006, Duffy entered a Subway sandwich store in Harbor City and committed two second degree robberies. The robberies were accomplished with the use of a toy gun Duffy placed at the head of one of the two cashiers on duty, and in front of at least two customers, one of whom was 10 years old. A witness provided the police a partial license plate number for the car in which the suspect drove away. Later that night (actually, early in the morning of September 27), officers from the Los Angeles Police Department were conducting surveillance in Wilmington on the vehicle suspected to have been driven from the robbery. Duffy got in the car and drove off; officers followed in patrol cars. Shortly thereafter, Duffy stopped the car and ran off.

Officer Edward Yoon rode in one of the cars following Duffy. When Duffy began to run, Yoon, who was in uniform, yelled at him to stop. Duffy looked at Yoon, and then ran toward some homes. Shortly thereafter, Yoon heard a woman scream that someone was trying to break into her house. He ran toward the sound. Duffy was near the door of

a rear duplex. Yoon identified himself as a police officer and again ordered Duffy to stop. Duffy ran and tried to jump over a tall brick wall.

Yoon grabbed Duffy's sweatshirt to pull him off the fence. Duffy swung his arm around and hit Yoon in the shoulder. As Yoon turned Duffy around, he pushed Duffy in the face, because he believed Duffy was trying to hit him again. Yoon finally got Duffy down on the ground, and sat astride him. Duffy continued to resist arrest. Duffy tried to get Yoon off him, and to get onto his feet to get away. Duffy flailed his arms and kicked his legs. Yoon punched or hit Duffy twice more and, after a few minutes, Duffy complied with Yoon's orders to cease resisting; Yoon then handcuffed him. Two other officers arrived and took Duffy away. A search of Duffy by a fourth officer yielded a small packet of tinfoil, which appeared and was eventually revealed to contain rock cocaine.

DISCUSSION

1. *No instructional error on lesser included offense of section 148, subdivision (a)(1).*

Duffy contends the trial court erred by failing to instruct on “misdemeanor resisting arrest” under section 148, subdivision (a)(1), as a lesser included offense of the felony of resisting an officer in violation of section 69. We do not find instructional error.

Duffy was convicted on one count of resisting an executive officer in violation of section 69. That statute criminalizes acts by any “person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty” (§ 69.²) Relying on the decision by our colleagues in Division Eight in *People v. Lacefield* (2007) 157

² A police officer is an “executive officer” under section 69. (*People v. Williams* (1999) 72 Cal.App.4th 1460, 1463, fn. 5.)

Cal.App.4th 249 (*Lacefield*), Duffy contends he was entitled to a sua sponte instruction on the lesser included misdemeanor offense of resisting without force. (§ 148.) In *Lacefield*, the court held that in a proper case section 148, subdivision (a) is a lesser included offense of section 69. (*Lacefield, supra*, 157 Cal.App.4th at p. 259.) Assuming for purposes of this opinion that section 148, subdivision (a)(1) is a lesser included offense of section 69, we nevertheless find no substantial evidence to support the giving of an instruction on that lesser offense.

Here, the jury was instructed the prosecution had to prove that: “1. A person willfully attempted to deter or prevent an executive officer from performing any duty imposed upon that officer by law; and [¶] 2. The attempt was accomplished by means of any threat or violence.”

Section 148, the statute for misdemeanor resisting arrest, provides, as pertinent, “[E]very person who willfully resists, delays, or obstructs . . . [a] peace officer . . . in the discharge or attempt to discharge any duty” commits a punishable offense. (§148, subd. (a)(1).) Division Eight recently revisited *Lacefield* in *People v. Carrasco* (2008) 163 Cal.App.4th 978. It found the fundamental principle established in *Lacefield* intact: “Because an accused cannot have resisted arrest forcefully without also having resisted arrest, . . . section 148, subdivision (a) is a lesser included offense to section 69’s second prong.” (*Id.* at p. 985.) We assume, arguendo, that *Carrasco* was correct on this point. In *Carrasco*, however, the court found no error in the trial court’s failure to instruct with section 148, subdivision (a), because there was insufficient evidence that would have supported a conviction of the lesser offense.

In *Carrasco*, the defendant approached a sheriff’s station, behaving oddly and aggressively toward a deputy at the front desk, and was ordered to leave. The defendant left, but returned in a short while on a bicycle with a duffle bag secured to its handlebars. He was ordered again to leave the station, after engaging in more bizarre and threatening behavior. He did not leave. Instead, he put his hand into the duffle bag and refused to comply with repeated orders from the deputy to remove his hand from the bag. (163 Cal.App.4th at p. 982.) After a second deputy grabbed him from behind, the defendant

tried to ride away on the bike, but was forced to the ground. (*Ibid.*) On these facts, the court found the defendant knowingly and unlawfully resisted officers through the use of force or violence. The officers had to physically take the defendant to the ground after he refused to comply with repeated orders to remove his hand from the duffle bag. The defendant also failed to comply with officers' repeated orders to relax and "stop resisting," and continued to struggle. Officers had tried to control the defendant, but he kept yelling, kicking, cussing and squirming until pepper spray was administered. (*Ibid.*)

The facts of *Carrasco* resemble this case, and its holding informs our decision. Like the appellant in *Carrasco*, Duffy argues a reasonable jury could have concluded he was guilty of misdemeanor resisting a peace officer because, although he "attempted to strike [officer Yoon] and made other attempts to make physical contact, [] [he] apparently did not." Duffy maintains the jury could have found his conduct occurred in response to being thrown to the ground and punched by Yoon, and thus, as no more than an attempt to defend himself from the officer's use of excessive force. As such, the jury could have found him guilty of the lesser offense of "resisting and obstructing [an] officer[.]" performing his duties, without the use of force or violence. (See *People v. Carrasco, supra*, 163 Cal.App.4th at p. 985.)

We disagree for, as in *Carrasco*, if Duffy resisted the officer at all—and he does not dispute that he did—he did so forcefully, thereby ensuring no reasonable jury could have concluded he violated section 148, subdivision (a)(1) but not section 69. (See *Carrasco, supra*, 163 Cal.App.4th at pp. 985–986.) Yoon testified Duffy knowingly and unlawfully resisted him through the use of force or violence. Yoon had to physically pull Duffy off the fence and take him to the ground because Duffy refused to comply with the officer's orders to stop. Yoon testified that when he pulled Duffy off the wall, "[Duffy] flailed his right arm, which struck [Yoon] on the shoulder. . . . We got into an altercation. We went to the ground." Even after the initial struggle, when Yoon had Duffy lying on the ground and was astride him, Duffy continued to fail to comply with repeated orders to stop resisting. He squirmed, struggled with, and flailed and kicked at Yoon, in an effort

to escape.³ As was the case in *Carrasco*, Duffy offered no contrary evidence to dispute Yoon's description of the men's struggle near the fence. Thus, the jury lacked a rational basis on which to conclude that while Duffy wrestled with Yoon, conduct for which it convicted him of resisting an officer, that struggle did not involve force or violence. Accordingly, the trial court did not err by not instructing the jury with section 148, subdivision (a) as a lesser included offense.

2. *Juvenile prior as strike.*

Duffy contends that the trial court's use of his prior juvenile adjudication as a "strike" to enhance his sentence under the Three Strikes law violated his due process and Sixth Amendment rights, as construed by *Apprendi v. New Jersey* (2000) 530 U.S. 466 [120 S.Ct. 2348], because he was not entitled to a jury trial in the juvenile court proceeding.

After Duffy filed his opening brief, the California Supreme Court rejected the arguments he advances here. In *People v. Nguyen* (2009) 46 Cal.4th 1007, the court rejected the claim that, under *Apprendi*, a prior conviction may not be used as a strike, unless the right to jury trial attaches at some point in the proceeding. (*Id.* at p. 1019.) The court observed that juvenile proceedings provide the same substantial safeguards as those required in an adult criminal action, except the right to jury trial. (*Ibid.*) The court specifically rejected the contention, asserted here, that the lack of a right to a jury trial in the prior juvenile adjudication precludes use of that adjudication to enhance the sentence for a current offense. "So long as an accused adult is accorded his or her right to a jury trial in the adult proceeding as to all facts that influence the maximum permissible sentence, no reason appears why a constitutionally reliable prior adjudication of criminality, obtained pursuant to all procedural guarantees constitutionally due to the

³ The jury was instructed that, if it had a reasonable doubt Yoon had used reasonable force in arresting or attempting to arrest Duffy, "and thus a reasonable doubt that [Yoon] was engaged in the performance of his duties, [it] must find [Duffy] not guilty of any crime which includes an element that the peace officer was engaged in the performance of his duties." The guilty verdict on the count for resisting arrest indicates the jury did not agree Yoon used excessive force in arresting Duffy.

offender in the prior proceeding—specifically including the right to proof beyond a reasonable doubt—should not also be among the facts available for that sentencing purpose.” (*Id.* at p. 1023, italics omitted.)

As in *Nguyen*, Duffy was afforded the right to have a jury determine whether he suffered a prior juvenile adjudication. He waived that right. Under *Nguyen*, by which we are bound, we cannot conclude that the trial court erred in using the prior juvenile adjudication to enhance Duffy’s sentence, or that his constitutional rights were violated. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

3. *Trial court’s refusal to dismiss prior strike or impose concurrent terms.*

Duffy contends the trial court’s refusal to dismiss a prior strike or to impose concurrent terms reflects either the trial court’s mistaken and prejudicial belief that it lacked the power to exercise discretion to do so, or an erroneous view regarding the scope of its discretion.

a. *Factual backdrop.*

Duffy filed a pretrial motion seeking dismissal of one or more of his priors, arguing such dismissal was warranted under section 1385 and *Romero*. The prosecutor opposed that motion. Both sides’ briefs addressed the scope of the trial court’s discretion to dismiss a prior. After noting its receipt of the *Romero* motion and the opposition, the trial court continued the hearing on the motion. The verdicts were returned in early March 2008.

The *Romero* motion was argued two months later. Duffy’s counsel urged the court to dismiss a strike because: (1) Duffy’s 1989 robbery conviction occurred when he was a juvenile, predated the Three Strikes law and did not become a qualifying strike until 2000; (2) Duffy had not used a weapon during that robbery; (3) Duffy has a serious drug abuse problem, and robs to fund it; (4) only a “toy” handgun was used to commit the current robberies; (5) although the victims of the robberies admittedly suffered “psychological injuries,” they did not suffer any physical injuries as a result of Duffy’s commission of the crimes; and (6) Duffy was 36 years old and, if a 20-year term was imposed, he would be “well over 50 years old” when released from prison.

In response, the prosecutor argued no dismissal was warranted. Duffy had preyed upon particularly vulnerable victims (two female employees at the Subway shop) to fund his drug addiction, and had actually alerted a bigger, stronger person to the fact that “something would be going down,” in order to get him out of the store to more easily accomplish the crime, and the robbery was committed in front of a 10 year old and his mother. Moreover, the fact that Duffy used a “fake” gun was irrelevant, because that did not diminish the fear his victims suffered. In addition, the instant crimes were particularly “brazen” in light of the fact that Duffy had both served a prison term for armed robbery, and been committed to the California Youth Authority (CYA) for the same offense. The prosecutor argued that neither the CYA commitment nor the prison term had helped to apprise Duffy of the severity of his actions, or to alleviate the possibility the same crime would not happen again. In addition, Duffy was inclined to violence, as shown by his 1998 conviction for armed robbery. The prosecutor also argued that Duffy’s arrest for police evasion and resisting arrest, demonstrated an inability and/or unwillingness to accept responsibility for his own actions. In response, Duffy’s counsel asked the court to take into account the fact that Duffy’s criminal conduct was undertaken because of a drug problem. Moreover, Duffy’s attorney opined that even if the court agreed to strike a strike, it would still be “putting [Duffy] away until he becomes an age where crimes very, very rarely occur.”

The court declined Duffy’s invitation to dismiss a prior strike. It explained that it was cognizant of the then-unsettled state of the law as it related to prior juvenile adjudications, and had read both sides’ briefs on the *Romero* motion. The court noted it had considered the nature of both the current and prior offenses, to determine whether there was a nexus between them. It found that nexus established here, given that both Duffy’s current and prior offenses directly involved robbery and theft. In addition, Duffy had continued to commit similar crimes, under increasingly severe circumstances, viz., most recently having committed robberies using a fake gun and in the presence of multiple victims, thus demonstrating a likelihood he might use a real gun given another opportunity to commit robbery. The court also looked at the “age” of Duffy’s priors to

determine whether he had led a crime-free life since those convictions or adjudications; he had not. Moreover, the court observed that Duffy was 36 years old and should have understood the magnitude of the fact that he already had two strikes before he committed the instant crimes. That Duffy failed or refused to recognize that fact demonstrated he was “not a smart[] robber because he keeps getting caught.” In the end, the court concluded there was no prospect Duffy was likely to “lead a law abiding life” if one or more of his priors were dismissed. Indeed, the court opined that Duffy was precisely “the kind of person that the Three Strikes law was intended to be used” to protect society against. The *Romero* motion was denied, “[b]ased on the totality, including [Duffy’s] background and character, which [the court didn’t] think inure[d] to [his] benefit.”

b. Standard of review.

Under section 1385, subdivision (a) the trial court has discretion to dismiss a prior strike if it concludes it would be “in furtherance of justice” to do so. (*Romero, supra*, 13 Cal.4th at p. 504.) The power to dismiss a strike, however, is “limited” and must be exercised in “strict compliance with the provisions of section 1385(a).” (*Id.* at p. 530.) The ruling is subject to review for abuse of discretion. (*Ibid.*; *People v. Carmony* (2004) 33 Cal.4th 367, 376.) The Supreme Court has declared that when ruling on a request to dismiss a strike, the trial court “must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the [Three Strikes] scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams* (1998) 17 Cal.4th 148, 161.) Failure to exercise discretion under section 1385 constitutes an abuse of discretion where it is based on a mistaken belief regarding a lack of authority to exercise such discretion. (*People v. Orabuena* (2004) 116 Cal.App.4th 84, 99–100.)

c. Application.

Duffy maintains the trial court’s statements at the sentencing hearing illustrate that the court did not make its decision refusing to strike a strike in an exercise of informed

discretion. He insists the court's statements reflect either a lack of awareness that it had discretion to strike one or more prior, or the court's erroneous belief that it could not impose concurrent sentences.

Duffy's argument is premised almost entirely on an exchange between his trial counsel and the court after his attorney asked the court, in imposing sentence, to consider the fact that Duffy's criminal behavior was driven by his addiction to drugs. The attorney noted that if the court adopted the recommendations in the prosecutor's sentencing memorandum, it would be "putting [Duffy] away until he becomes an age where crimes very, very rarely occur." Apparently incredulous at that statement, the trial court asked the attorney if he really believed a "50-year-old man cannot commit robbery?" Duffy's counsel responded, "Yes. I'm not saying they can't, but we are saying the age is—around 40 years old is usually, and hopefully in that time, he will get rid of that narcotics problem." This brief exchange, particularly considered against the backdrop of the trial court's clearly articulated reasons for declining to dismiss a prior, demonstrates there is no merit in Duffy's contention that it is "[a]pparent from the court's comments . . . that it only considered one alternative to sentencing in the instant case, either striking one prior count as to all counts and imposing a two strike sentence which would release [Duffy] back into society while in his fifties, or impose the strikes consecutively as to all four counts." We view the trial court's statements in their totality, not isolated snippets of the record.

In our view, it is evident the trial court understood both that it was vested with discretion, and the scope of that discretion. The trial court began its analysis of the *Romero* motion noting that Duffy had a single juvenile prior, and that the state of the law at that time was unsettled, as the Supreme Court had not yet issued its decision in *Nguyen*. Second, the trial court's analysis tracks the requirements of section 1385, *Romero* and *Williams*. The trial court considered a wide range of appropriate factors in imposing sentence, particularly the nature and circumstances of Duffy's current and prior crimes, his age, the age of his priors and whether Duffy's life had been crime free since their commission. The court also considered the purpose underlying the Three Strikes

scheme—to protect society from recidivists who commit serious and/or violent felonies—and whether there was evidentiary support demonstrating any likelihood Duffy would lead a law-abiding life if the court agreed to strike a prior. None of these questions was answered in Duffy’s favor. On the contrary, the court found Duffy had continued to commit the same sorts of serious crime he had begun committing as a juvenile, and had not learned as an adult that it was “time for him to move on” and make different life choices. Rather, Duffy continued to make the same poor choices. The only difference between Duffy’s latest crimes and those he had committed in the past was that he had become an emboldened serial robber as time went on: He had advanced to robbing more vulnerable victims, was willing to act in front of multiple witnesses (including a mother and her young child), used a fake gun and even drove his family car to commit the robberies. Given that trend, the court was confident that, if released from prison early, Duffy would not only continue to commit robberies, he might choose to use a real gun the next time. On this record, we cannot agree that the trial court either did not know it had discretion to dismiss a prior, or that it unreasonably refused to exercise its discretion to do so. On the contrary, the record reflects the trial court made an appropriate and “individualized” sentencing decision, taking into consideration both Duffy’s criminal history and society’s interest in protecting itself from certain felons, the circumstances of the current crimes, Duffy’s personal characteristics and drug problem, and other considerations. (*Romero, supra*, 13 Cal.4th at p. 531; *Williams, supra*, 17 Cal.4th at p. 160–161.) We find no abuse of discretion.

Duffy also maintains the trial court’s decision to impose consecutive, rather than concurrent sentences, demonstrates it operated under the erroneous belief that it lacked the discretion to impose concurrent sentences as to the four counts that occurred on two distinct occasions.

Under the Three Strikes law, when “a defendant is convicted of two or more current serious or violent felonies ‘not committed on the same occasion, and not arising from the same set of operative facts,’ not only must the court impose the sentences for these serious or violent offenses consecutive to each other, it must also impose these

sentences ‘consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.’” (*People v. Hendrix* (1997) 16 Cal.4th 508, 513; *People v. Lawrence* (2000) 24 Cal.4th 219, 222–223; *People v. Deloza* (1998) 18 Cal.4th 585, 591, 595; *People v. Hall* (1998) 67 Cal.App.4th 128, 139.) But, if the felonies are committed on the same occasion or arise from the same set of operative facts, the trial court has discretion to impose either concurrent or consecutive sentences. (*People v. Deloza, supra*, 18 Cal.4th at p. 591; *People v. Lawrence, supra*, 24 Cal.4th at p. 223; *People v. Hendrix, supra*, 16 Cal.4th at p. 513–514; *People v. Hall, supra*, 67 Cal.App.4th at pp. 138–139.) The “same occasion” requirement “refers at least to a close temporal and spatial proximity between the acts underlying the current convictions.” (*People v. DeLoza, supra*, 18 Cal.4th at pp. 595, 599.) See also *People v. Lawrence, supra*, 24 Cal.4th at p. 223. Other factors to be considered include whether the criminal activity was interrupted, whether one event may be considered to be separate from another, and whether the elements of one offense have been satisfied in a manner to render that offense completed before the commission of further criminal acts constituting additional and separately chargeable crimes. (*People v. Jenkins* (2001) 86 Cal.App.4th 699, 706.)

Here, the robberies were committed on the same occasion. They were committed in the same location, were brief in duration and committed against the same group of victims. They also arose from the same set of operative facts. The count involving possession of cocaine occurred on the same occasion as the count for resisting arrest; the drugs were in Duffy’s possession while he struggled with Yoon. The trial court had the discretion to impose concurrent or consecutive sentences. (*People v. Deloza, supra*, 18 Cal.4th at pp. 595–596; *People v. Hendrix, supra*, 16 Cal.4th at pp. 513–514.) It is not clear, however, that the court understood it was vested with that discretion. The court stated that “the reason [it ran] consecutive sentencing [was] because there [were] multiple victims in this particular case *because the events occurred at different times. . . .*” The court might have made a reasoned decision to impose consecutive sentences. Unfortunately, we cannot ascertain from the record whether the court recognized that it

had the discretion to impose concurrent sentences, but declined to do so. The quoted language indicates the trial court may have misunderstood the scope of its discretion, and believed consecutive sentences were mandated because it viewed each event as having occurred at a different time.

Accordingly, the case must be remanded for resentencing and a clear indication that the trial court understands the existence and scope of its discretion. (See *People v. Deloza, supra*, 18 Cal.4th at pp. 599–600.)

DISPOSITION

We remand the matter for resentencing.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.